UNITED STATES
v.
CLAYTON A. DILLMAN
and
JEAN P. DILLMAN

IBLA 78-298 Decided August 31, 1978

Appeal from decision by Administrative Law Judge E. Kendall Clarke declaring the Rat Trap lode and the Rat Trap placer mining claims null and void for lack of discovery. CA-2838.

Affirmed as modified.

1. Mining Claims: Discovery: Generally

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

2. Administrative Procedure: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to mineral claimant's lack of good faith must be clear.

APPEARANCES: Jeffrey A. Dillman, pro se; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the Contestant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jeffrey A. Dillman 1/ has appealed from a decision by Administrative Law Judge E. Kendall Clarke dated February 1, 1978, which declared the Rat Trap lode mining claim and the Rat Trap placer mining claim null and void. The claims are located in sec. 35, T. 40 N., R. 11 W., Mount Diablo meridian, Siskiyou County, California.

The proceeding was initiated by a contest complaint filed by BLM on behalf of the Forest Service which charged, inter alia, "that there was not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws sufficient in quantity, quality and value to constitute a discovery."

[1] We have reviewed the record in this case and the arguments raised by appellant in his statement of reasons. Appellant has not set out any new legal or factual arguments that have not already been thoroughly considered below. Judge Clarke's decision sets out in detail a summary of the testimony and the evidence and applicable law as well as his findings and conclusions. We are in agreement with his decision with one exception, and, therefore, we adopt it as the decision of this Board. A copy of it is attached hereto.

Appellant reiterates that the recent work he has done on the claims has exposed ore which he indicates "runs quite rich in places" and in his opinion shows sufficient volume of paying ore to justify mining. He says that a number of experienced hard rock gold miners have inspected the tunnels on the claim and have indicated that the prospects are excellent that the ore will produce a minimum of several ounces of gold per ton. He adds it is "very likely" that within the quartz vein there will be areas of much greater enrichment.

Taken at their best, these statements express merely a hope or a wishful expectation that a discovery of a suitable deposit of gold can be made with further investment of time and money. This falls far short of overcoming the prima facie case established by the Government at the hearing and supported by the record. Moreover, it is a cardinal principle of mining law that mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or

1/ Three hearings were held in this case. As of the first hearing, held in Yreka, California, December 1, 1975, Clayton A. and Jean P. Dillman were the record owners of the Rat Trap claims. As of the second hearing, held in Modesto, California, February 3, 1976, the Dillmans indicated they were in the process of turning the claims over to their son Jeffrey A. Dillman. By the third hearing, Jeffrey Dillman appeared as a witness on his own behalf and advised the Judge that he now was the record owner of both the claims.

development, does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit. Chrisman v. Miller, 197 U.S. 313 (1905); Barton v. Morton, 498 F.2d 288 (9th Cir. 1974).

We would additionally note that Government mineral examiners are not required to perform discovery work, to explore or sample beyond a claimant's workings, or to conduct drilling programs for the benefit of the claimant. Henault Mining Co. v. Tysk, 419 F.2d 786 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); United States v. Frisco, 32 IBLA 248 (1977). The ultimate burden of proving a discovery is always upon the mining claimant. United States v. Springer, 491 F.2d 239 (9th Cir.), cert. denied, 419 U.S. 234 (1974). On the record before him the Judge correctly held that the claims were invalid.

[2] We disagree, however, with Judge Clarke's finding that the Government has sustained the charge that "the land embraced within the claim is not held in good faith for mining purposes." With due deference to the Judge's opportunity to weigh the demeanor of the various witnesses who appeared at the hearing, the record, itself, does not satisfactorily support his conclusion that the mining claims were held by appellant in bad faith.

It is clear that appellant misapprehended the requirements of the mining law as they relate to discovery. It is similarly manifest that appellant, at least initially, attempted to obstruct the mineral examiner in his attempts to sample the claims. Nevertheless, at the trial appellant consistently maintained that he intended to develop the minerals which he thought were embraced within the claims. Moreover, his uncontradicted testimony that he had opened two tunnels, begun work on a third, purchased various equipment, and had expended approximately 6 months of labor on the claims provide independent corroboration of his intent. See United States v. Moorhead, 59 I.D. 192, 195 (1946); Centerville Mine and Milling Co., 49 L.D. 508, 513 (1923).

In order to support a finding that a mining claim is not held in good faith for mining purposes the evidence should be clear. Cf. Columbia Standard Corp. v. Ranchers Exploration & Development, Inc., 468 F.2d 547, 549 (10th Cir. 1972). Our examination of the record herein convinces us that the evidence on this question is neither substantial nor clear and the decision sustaining this charge is accordingly reversed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge

February 1, 1978

United States of America,	:	Contest No. CA ! 2838
	:	
Contestant	:	Involving the Rat Trap Mine Lode
	:	Mining Claim, situated in Sec.
v.	:	35, T. 40 N., R. 11 W., M.D.M.,
	:	Siskiyou County, California
Clayton A. Dillman and	:	
Jean P. Dillman,	:	
	:	
Contestees	:	

DECISION

Appearances: Charles F. Lawrence, Attorney, Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the Contestant;

Jeffrey A. Dillman, pro se.

Before: Administrative Law Judge Clarke.

This proceeding was initiated at the request of the United States Forest Service by Complaint filed by the Bureau of Land Management on May 5, 1975. The Complaint alleges in paragraph five as follows:

"a. There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws sufficient in quantity, quality and value to constitute a discovery.

b. The land embraced within the claim is non-mineral in character.

c. The land embraced within the claim is not held in good faith for mining purposes."

On June 5, 1975 a letter was received from Jeff Dillman, the son of the record owners, which was construed to be an Answer to the Complaint. By Notice of Hearing dated October 30, 1975, the matter was set for hearing on December 1, 1975 in Yreka, California where the first session of the hearing was held as scheduled.

The total record in this case resulted from three separate hearing sessions in widely separated parts of Northern California, spanning a period of sixteen months. The testimony began with a hearing in Yreka, California, the closest town of any consequence to the mining claim.

Although at the time of the first hearing Clayton A. and Jean P. Dillman were the record owners of the Rat Trap mining claim and resided in Modesto, California, their son, Jeff A. Dillman, was living on the claim on a permanent basis as revealed by Exhibit 26, a letter dated June 3, 1975 addressed to Mr. W. Holmes, Chief, Branch of Lands and Mineral Operations, B.L.M., and signed by Jeff A. Dillman.

On November 25, 1975, a request for postponement of the hearing set for December 1, 1975 was received in the Office of Hearings and Appeals in Sacramento, California. This request was based on the possibility of unpredictable weather and financial hardships (Exhibit 1). The request was denied on the day received. Neither Jeff Dillman, Clayton A. Dillman or Jean P. Dillman appeared at the hearing, nor anyone representing them. The undersigned Administrative Law Judge ascertained from the California Highway Patrol that the road from Yreka to Sawyers Bar, the location of the mining claim and the place of residence of Jeff A. Dillman, was open and free of snow on the day of the hearing. Although Jeff Dillman asserted in his letter (Exhibit 1) that he was "* * * now the sole owner of the Rat Trap mining claim" evidence received at the first hearing session revealed that the record owners continued to be at that time Clayton A. and Jean P. Dillman, Jeff Dillman's parents.

The Contestant presented evidence at the first hearing session through Charles R. Pickering, who at the time of the mineral examination, and prior thereto, was district ranger at Sawyers Bar for the United States Forest Service. Mr. Pickering stated that he was acquainted with Jeff Dillman. He had exchanged correspondence with him regarding the occupancy of the Rat Trap claim. He testified that Jeff Dillman moved into a cabin located on the Rat Trap claim in April or May of 1973 and that he had observed the mining claim from the adjacent road frequently. (Tr. 12). He first contacted Mr. Dillman August 8, 1973. At that time there was no mining equipment or activity that he could see which would lead him to believe that Jeff Dillman was actively mining. In October of that year he began

to notify the record owners concerning a schedule for a mineral examination. At the request of the owners, a delay was granted until July of 1974. In ensuing contacts with Jeff Dillman, an unfriendly atmosphere developed and Mr. Pickering was cautioned not to come around the claim unless he, Jeff Dillman, was notified in advance.

A mineral examination date was finally scheduled for August 21, 1974. (Tr. 16). The day before the scheduled examination of the Rat Trap claim, an examination was conducted in the general area on another claim. A large crowd of 50 to 60 people who were quite hostile were encountered by the Forest Service and the mining claimant would not permit an examination of the claim. On that occasion Jeff Dillman announced to the crowd that he would not permit his claim to be examined on the following day. Because of the hostile environment, the district ranger again postponed an examination of the Dillman claim.

After a good deal of additional correspondence with the record owners, the examination for the Rat Trap claim was rescheduled for October 23, 1974. (Tr. 25). On that date a mineral examination was attempted after some disagreement with a group of people including Jeff Dillman who met the representatives of the Forest Service at the claim site. Mr. Dillman quickly took the district ranger and the mineral examiner, Emmett Ball, up a hill and into a tunnel or adit so quickly that no one had the opportunity to obtain equipment, including lights. Mr. Ball made an examination in the tunnel by striking matches while going back to some fifty feet to the face. When he returned to the truck to obtain proper equipment for the examination, Mr. Dillman at the urging of others in the crowd refused to permit a further examination of his claim. (Tr. 27).

Mr. Emmett Ball, a fully qualified mining engineer for the United States Forest Service testified that he graduated from the Mackay School of Mines in the University of Nevada with a bachelor of science degree in mining engineering in 1951, that subsequently he worked for a number of companies in the mining field including working as an underground miner until going to work for the United States Forest Service in 1962 as a mining engineer. (Tr. 35). He described his attempted examination and the hostile crowd which he encountered. (Tr. 35). He described how he was quickly taken up the hill to the point called the discovery by Jeff Dillman and not having the opportunity to take any of his gear with him. He explained that he was not permitted to take a sample. (Tr. 38). Although he observed the adit with matches and noted that there was a vein showing in it which had never been stoped, he concluded that the "old timers" who originally put the adit in the hill didn't find anything worthwhile. (Tr. 38). He testified also that he examined a stockpile of material near the portal of the adit, but did not see any signs of gold in the rock.

It was his belief from talking with some of the "old time miners" in the area and examining literature that the tunnels had been allowed to cave in because they were essentially valueless. (Tr. 40). From his limited examination, Mr. Ball was of the opinion that a prudent man would not be justified in "going ahead with this claim." (Tr. 47).

At the conclusion of the testimony by Mr. Ball, counsel for the Contestant moved to amend the Complaint to include the newly filed Rat Trap placer claim which covered much of the same ground as the claim in question. He further moved to have a continuance of the hearing to a place convenient for the record owners of these claims so that they might have proper notice and have an opportunity to come forward and testify concerning any mineralization they believe to be present. The motion was granted and a second hearing session was scheduled for Modesto, California.

At the second hearing session Jean P. Dillman, Clayton A. Dillman, and Jeffrey a. Dillman appeared for the Contestees. Mrs. Dillman testified that she was one of the record owners of the Rat Trap mining when the subject action was commenced (Tr. 4), and that she and her husband were in the process of turning the claims over to her son, Jeffrey A. Dillman. That is both the lode claim and the placer claim (Tr. 5), and that she was aware that the placer claim had been added to the subject proceeding by amendment. Mrs. Dillman stated that she had no extensive training in geology although she had taken two geology courses in college. She bought four mining claims, including the Rat Trap lode claim, for a total of $2000, but had not information regarding the value except by hears (Tr. 8). She was only on the claims four days in 1973 looking for old mines or workings. (Tr. 10). She stated at the very end of the tunnel, the place Jeff Dillman indicated was his discovery, there was a potential vein which was a mixture of quartz, rubble and "something like sulfur." It was her belief that "in between that and the quartz it looked like there just could possibly be some type of place you'd find gold." She described this area as being a quarter of an inch in width. (Tr. 14).

Mrs. Dillman in answering the question as to what she considered to be a discovery on the Rat Trap stated:

> "Well, to my knowledge there hasn't been any fabulous discovery yet.
> * * * But there has been quite a considerable amount of work done
> toward the hope that there will be a fabulous discovery."

Concerning the placer claim, she stated (Tr. 15) that whether or not a discovery is made for placer gold is dependent upon the amount of work done. Mrs. Dillman stated that she did not in fact make a discovery of a valuable

mineral deposit before filing the location notice for the placer claim (Tr. 20), but that she thinks there is a probability of finding placer gold at bedrock. (Tr. 21).

Jeff Dillman testified stating that he had no formal education in mining but that he has studied on his own (Tr. 28), and that the mineral which he is claiming as the discovery is gold. (Tr. 29). Jeff Dillman testified that the discovery which he claims consists of the two tunnels, in both of which he has found gold bearing quartz veins. The lower tunnel assays show a trace of gold and silver. (Tr. 32). It was his opinion that the lower tunnel needed to be extended another fifty to seventy-five feet to be under the upper tunnel and that there was presently not sufficient mineralization in the lower tunnel to sustain a mining operation. (Tr. 36). It was his opinion that although the vein in the upper tunnel was quite narrow, several inches, that on the floor it widened out to twelve inches. (Tr. 39). He stated that the samples that were selected along the ceiling of the lower tunnel on the vein showed traces of gold and silver. (Tr. 43).

At the time of this hearing session, he had not removed any gold from the lode mining claim which he had sold. (Tr. 44).

It was his opinion that the discovery on the lode claim consisted of the tunnels. (Tr. 45). It was his opinion at the time of the second hearing session that he could not mine the material profitably but expected to be able to in the future after more work was done. (Tr. 46). In regard to the placer claim he stated that he had found some fine gold but had not reached bedrock. (Tr. 47). He had dug in other places but he had just been prospecting. (Tr. 49).

Mr. Ball, the mining engineer for the Contestant, was recalled at the second hearing session and stated that he was on the placer property January 27, 1976 to obtain a placer sample. (Tr. 52). At the time, Jeff Dillman was present. Mr. Ball stated that he could not reach bedrock so he took samples behind some rocks which might have formed a trap for the gold. (Tr. 53). Out of two pans he obtained one fine color less than five cents per yard which was not sufficient to permit the working of the claim at a profit. Mr. Ball stated that based upon what is now open for examination, a prudent man would not be justified in expending his time and means with a reasonable prospect of developing a paying mine. (Tr. 56).

At that point in the second hearing, a motion for continuance was made by Jeff Dillman and agreed to by the Contestant. The agreement allowed Jeff Dillman six months additional time to do exploration work and to move for a re-opening of the hearing.

On April 20, 1977 based on the motion of Jeff Dillman, a third hearing session was held at the Hoopa Indian Reservation, an area close to the mining claims which are the subject of this proceeding. At the time of this hearing Jeff Dillman appeared as a witness on his own behalf and advised the court that he now was the record owner of both mining claims.
Mr. Dillman introduced exhibits which were photographs showing some of the work that he had been accomplishing since the last hearing which included construction of an explosive magazine, the acquisition of an ore car, and the installation of certain water lines. Exhibit E was a picture of an area which he had proposed for a settling pond if he ever got a mill constructed. Exhibits F and G were pictures of a third old tunnel which he was in the process of opening. He introduced Exhibit H which was an assay report from Robert Craig Company and showed mineral values at $50.83 per ton for gold and 79 for silver. (Tr. 11). He stated that the material for the sample was taken from the second tunnel that he opened up, the one in which Mr. Ball had taken samples from the quartz vein at the face, and that the material was picked from areas of observed mineralization. It represented the quartz vein only (Tr. 13), and that the vein varied from approximately one foot to just a few inches.

Jeff Dillman offered Exhibit J which was a selection of samples which had visible gold in them. (Tr. 19). These samples came from tunnel two. One sample was marked K which was also selected sample which showed some visible gold. Mr. Dillman said that he had mortared and panned some of the samples that he had removed and had recovered approximately a half-ounce of gold but this was stolen from him when his cabin was broken into. (Tr. 21).

He stated that the mineral occurrences are erratic in the vein but he hopes to discover a pocket of gold bearing ore. (Tr. 39). His plan was not to smelt the ore but rather to mill it, therefore he would not recover all of the gold that is shown by fire assay but only the free milling gold. (Tr. 40).

Mr. Dillman cross-examined Mr. Ball who stated that the sampling that he had done in the tunnel where he took samples three feet apart across the vein gave an accurate indication of the value. (Tr. 48). These are shown on Exhibit 29. These samples showed that the gold ran between .04 and .03 ounces per ton which of course is in the neighborhood of a trace. Mr. Ball examined the pieces of quartz which compose Exhibits J and K and found visible gold in these quartz specimens.

During his examination, Mr. Ball asked about the work which had been done on the third tunnel up the hill and Mr. Dillman said that he hadn't opened it yet and wouldn't show it to him. (Tr. 58).

SUMMARY OF APPLICABLE LAW

In this proceeding, the Contestant is required to produce sufficient evidence to establish a prima facie case in support of its contention that a discovery does not exist on the contested claim. Thereafter, the Claimant must show by a preponderance of the evidence that the claim is valid. Foster v. Seaton, 271 F. 2d 836 (D.C., C.A., 1959); United States v. Springer, 491 F. 2d 239, 242, (9th Cir. 1974), cert. denied, 95 S.Ct. 60 (1974).

The Act under which these mining claims were located (30 U.S.C., 22 et seq., May 10, 1872) requires for a valid claim the discovery of a valuable mineral deposit.

It has been held in a long list of cases beginning in 1894 that a discovery of a valuable mineral exists where:

> "* * * minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a profitable mine . . . ." Castle v. Womble, 19 L. D. 455, 457 (1894).

In the United States Supreme Court case of Chrisman v. Miller, 197 U.S. 313 (1905), the Court approved the earlier definition by the Department, Castle v. Womble, supra, that a mineral found on a claim such as gold or silver must exist in quantities sufficient to justify the expenditure of money for the development of the claim and extraction of the mineral. (See also Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963)).

The Supreme Court has further held that it is the intent of the mining laws to reward the discovery of minerals which are valuable in an economic sense and that the minerals which would not be extracted by a prudent man because there is no demand for them for a price higher than the extraction and transportation costs are not economically valuable. United States v. Coleman, 390 U.S. 599 (1968).

A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found the evidence of mineralization insufficient to support a finding of a discovery. United States v. Shield, 17 IBLA 91 (1974); United States v. Ramsher Mining and Engineering Co., Inc., 13 IBLA 268 (1973); United States v. Woolsey, 13 IBLA 120 (1973); United States v. Gould, A-30990 (May 7, 1969).

DISCUSSION AND CONCLUSION

In this case the Contestant and the Court have gone to extreme lengths to assure that the mining claimants have had due process. It is clear from the charges in the Complaint and the testimony that the Rat Trap mining claim appeared to the administrative personnel of the Forest Service to be a claim used improperly as a homesite. From the first observations by the Forest Service personnel, after this claim was occupied, there appeared to be very little or no mining activity and little or no mining equipment located on the claim. Those observations were followed by a series of attempts to make a proper mineral examination so that a determination could be made as to whether the claim was valid under the United States mining laws. However, this mining claimant used every tactic possible to prevent an adequate examination. The motivation for the uncooperative attitude of the claimant can be inferred from the tone of a letter to him from a local attorney which he showed to the district ranger during the time he was attempting to arrange for an examination of the claim. The district ranger, Mr. Pickering testified that the letter stated "* * * that mineral claim hearings are held on kangaroo-court-basis and are completely unfair and a sham." (Tr. 15). The letter also suggested that Jeff Dillman, the individual living on the claim, could delay any attempts to remove him from the claim for up to two years through appeals process and that if he was finally forced to move that the whole process would start over again. (Tr. 15).

The first examination of this claim by Mr. Ball, the Contestant's mining engineer, standing alone would at best only constitute a bare prima facie case. The fact is that up until the time of the first hearing session Mr. Ball was not given an opportunity to make an adequate examination even though the mining law makes it incumbent upon the mining claimant to keep his mining claim open for such examination. (Calla Mortenson, 7 IBLA 123 (1972)). However, the determination of a prima facie case need not be made from the first examination but the entire evidentiary record may be considered. U.S. v. Taylor, 82 I. D. 68 (1977); U.S. v. Arizona Mining and Refining, 27 IBLA 99 (1976).

At the second hearing session the testimony of Jean P. Dillman and her son, Jeffrey A. Dillman, taken together only shows that they had hopes of making a discovery both in regard to the placer claim and in regard to the lode claim. Jeff had the intention, at least he manifested the intention, of extending a tunnel on the Rat Trap lode claim in hope of finding a pocket of gold bearing ore.

At the third hearing session Jeff Dillman had a number of months in which to increase his exploration and in fact he did do more work. He still expressed the hope of discovering a pocket of gold bearing ore which would make mining a profitable venture. In regard to the placer claim, he had hope of finding placer gold in sufficient quantities to constitute a valuable mine when he reached bedrock. Of course, he had not reached bedrock and in fact didn't even know how deep bedrock was located nor did he know the extent of the gravel.

By the time of the third hearing session, Mr. Ball had made a more extensive examination of the tunnels and cut samples in an acceptable scientific manner which reflected very low gold values. Even though Jeff Dillman's hand-picked specimens marked as Exhibits J and K did show visible gold, Mr. Ball's opinion of overall low values were not overcome. Isolated high gold values standing alone even in the form of assays are not conclusive evidence of valid discoveries. U.S. v. Bechthold, 25 IBLA 77 (1976).

The most that can possibly be said from the totality of the evidence is that the mining claimant here, Jeffrey A. Dillman, in regard to the lode claim, hoped in the future to discover a pocket of gold bearing quartz sufficient to enable him to operate this mining claim in a profitable manner and in regard to the placer claim hoped to encounter sufficient gold at bedrock to enable him to operate at a profit. Without question he has not reached that stage at this time on either the lode claim or the placer claim. The Contestant has gone to great lengths to assure that Mr. Dillman had every opportunity to prove his claim. At best it appears that Jeffrey Dillman has been able to reside on his invalid mining claim now for a matter of almost five years, a result better than that predicted by the attorney whose letter Jeff Dillman earlier showed to the district ranger.

The Contestant has sustained its charge A contained in paragraph 5 of the Complaint, as amended, as to both the Rat Trap placer and the Rat Trap lode. The sustaining of charge B, although not essential to this ruling, is implicitly within the above findings. Under all of the circumstances and evidence in the record, I also sustain the charge C in paragraph 5 as to both claims.

Pursuant to the above findings, I hereby declare the Rat Trap lode claim and the Rat Trap placer claim to be null and void.

E. Kendall Clarke
Administrative Law Judge